IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

U.O.I. **Vs**. M/s Mewar Sugar Mills Ltd. & Anr.

D.B. CENTRAL EXCISE APPEAL NO.15/2006

Date of judgment : 19th May, 2006

PRESENT

HON'BLE JUSTICE MR. RAJESH BALIA
HON'BLE JUSTICE MR. R.P. VYAS

Mr. V.K. Mathur for the appellant.

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BY THE COURT:- (PER HON'BLE MR. RAJESH BALIA J.)

Heard learned counsel for the appellant.

This appeal is directed against the order of the Tribunal dated 3rd August, 2004. The following question is suggested by the appellant as a substantial question of law arising from the order of the Tribunal:-

> "Whether the learned Tribunal is right in law in extending the benefit of the Notification No.118/75 dated 30th April, 1975 to the respondent-assessee on the clearances of steam cleared without payment of

duty and without following the procedure laid down in Chapter X of the Rules, 1944 to another unit which did not fall under the purview of definition of "Factory" during the period from Sept. 1980 to 3rd May, 1983."

The Tribunal has found that the respondent assessee has two factories one by name M/s Mewar Sugar Mills engaged in manufacturing of sugar and another Mewar Distillery and Chemicals Works which is engaged in manufacturing "fusel oil". The steam generated and manufactured in the factory of M/s Mewar Sugar Mills was transmitted to Mewar Distillery and Chemicals Works and used in the said factory for manufacturing purposes.

Vide notification No.118/75 dated 30th April, 1975, it was stated that the Central Government hereby exempts goods falling under Item No.68 of the First Schedule to the Central Excises & Salt Act, 1944, manufactured in a factory or intended for use in the factory in which they are manufactured, or in any other factory of the same manufacturer, from the whole of the duty of excise leviable thereon.

Thus, this para of notification was found to be

complied with inasmuch as the steam manufactured by the Mewar Sugar Mills fall under item 68 of the First Schedule to the Central Excise & Salt Act, 1944 as was then existing and the said steam was used by the manufacturer in his another factory, therefore, he was entitled to exemption of the whole duty.

The Joint Commissioner as well as Commissioner (Appeals) have held that the assessee is not entitled to the benefit of exemption inter alia on the ground that the steam has been used in another factory and not in the same factory and also on the ground that the assessee has not complied with procedure laid down under Chapter X.

Though the Assessing Officer has declined the benefit on the ground that assessee has not used the steam so generated in Sugar Mill in the same factory and has also held that the provision of Chapter X have not been complied with by the assessee. It appears that before the Tribunal, the question relating to adherence to procedure laid down under chapter X was not argued and only contention raised on behalf of both sides was that because the steam was not utilised in the same factory, the assessee was not entitled for the same.

The entitlement for the benefit of exemption substantively is obviously extended to a manufacturer whether the steam is used in the same factory or in another factory of the same manufacturer and, therefore, on the basis of arguments made before the Tribunal, the finding reached by the Tribunal is unexceptionable.

Moreover, we find that the matter relates to the period 1980-83 and even the Assessing Officer has ultimately sought to deny the benefit of exemption on technical ground not following the procedure established by law. Said question does not appear to have been argued before Tribunal.

We in these circumstances, do not consider that the question raised in this appeal is substantial question of law. Hence, the same is hereby dismissed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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